

## Olivia Y plaintiffs to Bryant: Replace CPS head or go to court

BY LARRISON CAMPBELL  | MAY 31, 2018

The plaintiffs in a long-running lawsuit against Mississippi's foster care system are taking the state back to court after the governor refused their request to remove the current head of Child Protection Services. Thursday's announcement is the latest in a **five-month stretch** (<https://mississippitoday.org/2018/03/13/child-protection-services-once-lauded-now-in-contempt-of-court/>) of bad news for the beleaguered agency, which spent much of the 2018 legislative session under scrutiny for an **unexplained \$39 million deficit** (<https://mississippitoday.org/2018/01/10/lawmakers-blown-away-by-40-million-child-protection-services-budget-shortfall/>).



EXHIBIT

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Child Protection Services executive director Jess Dickinson has made progress in past 14 months, said Gov. Phil Bryant.

Citing a “failure of leadership,” attorneys for plaintiffs in the Olivia Y. lawsuit asked a federal judge on Thursday to appoint an outside receiver to run the agency. Marcia Lowry told Mississippi Today that she filed the motion for contempt only after the plaintiffs asked Gov. Phil Bryant to replace current head of Child Protection Services, Jess Dickinson, with new leadership.

Lowry said under Dickinson’s tenure, the agency is even farther from complying with the terms of the settlement in Olivia Y., a 2004 lawsuit responsible for completely dismantling and then rebuilding the state’s foster care agency. Lowry cited the agency’s struggle to staff enough caseworkers as a ongoing issue that “puts Mississippi’s children at risk.”

“Since (Dickinson’s appointment in September) it has been an increasingly discouraging prospect,” Lowry said. “I do not believe the current administration is going to be able to deal with the serious problems they have.”

But in a statement to Mississippi Today, Bryant doubled-down on his support for Dickinson, whom he had appointed only nine months earlier, stating the former Supreme Court Justice was steering the beleaguered agency in the right direction.

“I am pleased with the progress CPS has made, including reducing by 700 the number of children in foster care the last 14 months and nearly doubling the number of adoptions in the current fiscal year. I am confident that progress will continue under current leadership as we vigorously oppose plaintiffs’ latest legal maneuvering,” Bryant said in the statement.

Agency data released last week backs up Bryant’s claims about foster care and adoption. According to Child Protection Services, the number of children in the state foster care system has dropped dramatically since April 2017, going from 6,094 to 5,403 in May 2018. In fiscal year 2017, CPS finalized 302 adoptions. For fiscal year 2018, which ends June 30, the agency has already finalized 574 adoptions.



Larrison Campbell, Mississippi Today

Gov. Phil Bryant and Dr. David Chandler, right, former commissioner of Child Protection Services, in May 2017.

In a news conference on economic development Thursday afternoon, Bryant also said in response to a question about the motion for contempt that “we believe we are in compliance.”

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CPS issued a statement Thursday that echoed Bryant's confidence in Dickinson and the agency's progress in the two years since the Legislature had voted to set up CPS as a stand-alone agency. Until late 2015, CPS had been a subagency of the Department of Human Services. The change, another requirement of the Olivia Y. settlement, was meant to ensure the agency received proper funding.

"We are confident we are moving in the right direction to ensure the continued protection and safety of at-risk children and their families. We disagree with the plaintiff's assertions and will continue working diligently each day to care for the thousands of abused and neglected children entrusted into our custody for protection," Child Protection Services said in its statement.

But the agency is not in compliance with the terms of the Olivia Y. settlement, according to data released earlier this month. The settlement, which the agency agreed to in late 2016, requires CPS to have enough caseworkers on staff to properly handle all of the children currently monitored by the agency.

Data released earlier this month indicates that Child Protection Services is still struggling to maintain minimum staffing requirements. At the end of 2017, only 61 percent of caseworkers had caseloads small enough to comply with the settlement, according to Public Catalyst, the consulting firm hired to monitor the agency. The target for that date had been 90 percent.

As of May 15, the compliance rate was even lower—only 52 percent of caseworkers were overseeing the correct number of cases. This means that by the terms of the settlement, nearly half were working over capacity.

The reason for the drop in compliance is complex. Since the first of the year, CPS has added 22 caseworkers, going from 823 to 845. And while, as Bryant mentioned, the number of children in foster care has declined by 700 over the last year, the total number of cases being monitored by CPS employees has actually increased, surging 1200 from 14,476 to 15,693 in the first four months of 2018.

In an April meeting, Dickinson explained that the agency had been steadily hiring new employees but that the sheer number of children in the state system, particularly on the Mississippi Gulf Coast, made it difficult to meet the settlement's requirements.

High turnover rates have long been a problem for CPS caseworkers. To stem these losses, in January, the legislature gave the agency the authority to increase the starting salaries for its caseworkers by \$4,000, from \$26,000 to \$30,000 a year. Whether this has helped retention is unclear. The agency did not respond to a request for information on staff turnover Thursday.

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But since the start of the year the agency has lost several high profile leaders. Last week, Dickinson announced in a staff memo that Tracey Malone, the Deputy Commissioner of Child Welfare, would retire this summer. Cindy Greer, a deputy commissioner for information technology, resigned earlier this month. And Takesha Darby, the agency's deputy commissioner of finance, left the agency shortly after the agency's \$39 million deficit announcement.

In addition, for fiscal year 2019, the Legislature funded the agency at the same level as it had the previous year—\$110 million. This is a big problem, Dickinson said in April, if the agency is required to bring on even more staff. As a result, Dickinson asked whether the strict requirements of Olivia Y. echo what's in the best interest of the child, suggesting that the alternative to exceeding caseloads is to leave the children in unsafe homes.

"We are going item by item down this budget, and we're trying to determine what we have to spend, what can I cut that will least affect the safety of our children," Dickinson said. "And I am making those decisions irrespective of Olivia Y. requirements? I don't want to put a child in danger just to avoid





Tracy Malone, Mississippi Department of Child Protection Services

criticism in the Olivia Y. litigation.”

But Lowry countered that a child, not properly supervised, is also a child at risk. This is, in effect, the origin of the Olivia Y. litigation. In 2004, six children in foster care sued the state of Mississippi for failing to adequately provide for children in state custody. Olivia Y., a three-year-old, was so severely neglected by her foster family that by the time the state intervened she weighed only 22 pounds. A federal court sided with the plaintiffs, known collectively as Olivia Y., and the resulting settlement has completely remade the agency—and made staffing requirements one of the pillars of this new agency.

Bryant’s decision to appointment Dickinson to the helm of CPS last September was viewed by many at the time as a relatively uncontroversial move. The former state Supreme Court justice seemed a natural replacement for his one-time colleague on the bench, David Chandler, who had received national praise for his work with the agency since taking the reins in late 2015.

But within months, Dickinson proved he wasn’t afraid to ruffle the feathers of even the most powerful lawmakers. In early January, at his first public meeting at the Capitol, Dickinson stunned legislators by announcing his agency was facing a record-breaking \$39 million deficit, which he blamed on a “legislative error.”

Many lawmakers took that blame, admitting that, in their rush to comply with the requirements of the Olivia Y. settlement, they didn’t fully vet how spinning Child Protection Services into a separate agency from the Department of Human Services would affect its funding.

“We thought we could do it on our own, and we went out and did it wrong,” said Sen. Terry Burton, R-Newton.

But when asked how the problem would be addressed in that meeting, Dickinson relied heavily on John Davis, executive director of the Department of Human Services, to explain the funding issues. Many lawmakers were quick to question why Dickinson waited three months after joining CPS to notify lawmakers of the deficit, and some questioned whether Dickinson, himself, fully understood how the agency’s funding works.

“These agencies, we depend on them and their experts to tell us what goes in that federal line,” said Senate Appropriations Chair Buck Clarke, R-Hollandale, said in January.

Lowry, too, said she’s frustrated with Dickinson’s answers about his agency’s budget, particularly what



Rep. Terry Burton, R-Newton

caused the nearly \$40 million deficit for 2018, but she's never received a clear explanation.

"We tried to understand what the new commissioner was talking about when he was talking in the paper about what was the deficit," Lowry said. "We were never able to get to the bottom of that."

She said she's asked for information about how the legislature's decision to not increase funds for 2019 would affect staffing but has not yet received answers.

In April, Dickinson told Mississippi Today that "I have had nobody be able to explain to me how this happened." His guess, he said, was that the 2018 deficit was caused by the agency leadership's attempt to get the legislature to "increase spending authority" for the new agency.

"They over-represented expenses, they over-represented revenues, but in an attempt to arrive at a correct bottom line, which they never did," Dickinson said in April.

As the lawsuit has dragged on for the last 14 years, it's clear that rebuilding an agency has not been an easy task, for either the state or those taking it to court. In his comments Thursday, Bryant suggested that "the plaintiffs' attorneys are making a lot of money keeping this case going. They do not want to settle it."

Lowry, who works for nonprofit A Better Childhood, offered a different take.

"We're not interested in causing any kind of disruption for the sake of disruption. Basically we have tried everything we can think of and we're not going to wait. Enough is enough."

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